

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 17, 2015**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2014AP911**

**Cir. Ct. No. 2013CV10031**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**SAMANTHA WEBSTER,**

**PETITIONER-RESPONDENT,**

**v.**

**DAWAYNE GATZOW,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
DANIEL A. NOONAN, Judge. *Reversed and cause remanded.*

Before Curley, P.J., Kessler, J. and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Dawayne Gatzow appeals an order enjoining him from harassing Samatha Webster. The issue is whether the circuit court acted properly in reconsidering its initial order denying the injunction. We reverse and

remand for a *de novo* hearing on Webster's request for an injunction against Gatzow.

¶2 The conflict between the parties has its genesis in a custody dispute between Webster's sister and Gatzow's brother. Webster petitioned for a harassment injunction against Gatzow, alleging that he shot out the rear passenger window of her car, an allegation Gatzow denied. Both parties appeared without lawyers in front of the court commissioner, who granted the injunction. Gatzow sought *de novo* review before the circuit court with the assistance of a lawyer. After hearing the testimony, the circuit court concluded that Gatzow's testimony was more credible than Webster's testimony and denied Webster's request for the injunction.

¶3 Less than two weeks later, the circuit court decided to reconsider the order on its own motion. During the reconsideration hearing, the circuit court allowed Webster to submit pictures of her car and a copy of a municipal citation that Gatzow received from the Milwaukee Police Department for vandalism, which Webster said was related to this incident. However, the circuit court did not allow Gatzow's lawyer to present evidence from the police officer who issued the citation, although the officer was present at the hearing. Gatzow's lawyer told the court that the police officer would testify that while investigating the ticket, he knocked on doors in the neighborhood but could find no one who heard a gun firing and he found no other physical evidence to corroborate Webster's allegation that Gatzow shot out her window. Gatzow's lawyer said that the officer would also testify that his investigation led him to conclude that Webster's story of what occurred was not plausible. The circuit court refused to allow the officer to testify, stating that the only issue was whether the ticket had been issued, and there was no question that it had. The circuit court reversed its initial ruling, concluding that

Webster's version of events, as bolstered by the photos and the citation, was more credible than Gatzow's version of events.

¶4 At the outset, we note that Webster, who is proceeding *pro se*, failed to file a respondent's brief on appeal. On November 6, 2014, we issued an order notifying Webster that her brief was delinquent and directing her to file a brief within five days. We warned her that the order from which the appeal had been taken could be summarily reversed if she did not respond. *See* WIS. STAT. RULE 809.83(2) (2013-14).<sup>1</sup> Webster did not respond to our order. On November 21, 2014, we issued a second order, again warning Webster that she must file a respondent's brief within five days, or request an extension of the deadline for doing so supported by good cause. We warned Webster that by failing to file a brief, she was tacitly conceding error and faced summary reversal. *See State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993). Webster did not respond to our order. On December 11, 2014, we issued an order notifying the parties that we were submitting the case for decision to the panel based solely on the arguments contained in Gatzow's brief because Webster had not filed a brief as ordered.<sup>2</sup> Although at this point we could summarily reverse the circuit court's order based solely on Webster's procedural default, in light of Webster's *pro se* status we have considered the issues raised on the merits, albeit without the benefit of any arguments Webster may have presented.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

<sup>2</sup> The order of December 11, 2014, incorrectly stated that Gatzow was the respondent, not Webster. The order has since been amended as to the respondent's name to correct the error.

¶5 A circuit court has authority to reconsider a judgment on its own motion under WIS. STAT. § 805.17(3), which provides in part: “Upon its own motion ... made not later than 20 days after entry of judgment, the court may amend its findings or conclusions or make additional findings or conclusions and may amend the judgment accordingly.” We have previously explained that the statute is broad in scope because:

A judge’s job is to do justice. A judge endeavors to come to the right result. The law gives a judge the right to change his or her mind, so long as it is done in a timely fashion and the parties are given a fair chance to be heard.... A judge should not have to live with the consequences of a decision that he or she, upon reflection, believes to be wrong.

*See Salveson v. Douglas Cnty.*, 2000 WI App 80, ¶43, 234 Wis. 2d 413, 610 N.W.2d 184 (citation omitted). When the circuit court decides to reconsider a judgment on its own motion, “nothing prevents the court from accepting additional evidence in the interests of justice.” *Id.*

¶6 During the reconsideration hearing, the circuit court allowed Webster to submit additional evidence to corroborate her version of events, but would not allow Gatzow to present relevant evidence favorable to him to rebut the implication that he had, in fact, engaged in vandalism directed at Webster. Gatzow’s lawyer stated that the police officer who issued the citation would testify that his investigation found no physical evidence or eyewitnesses to support Webster’s allegation, and would explain the circumstances that led to the citation being issued. Gatzow also wanted to present his own testimony about the citation, which he was in the process of challenging, including the date he received it, to rebut Webster’s suggestion that he lied to the court commissioner about being cited and to address the circuit court’s statement that his prior testimony about the

citation was inconsistent and hurt his credibility. Because the circuit court decided to allow one party to submit additional evidence, it should have allowed both parties to submit additional evidence. The circuit court's comments suggest that it believed that it would be improper to allow additional *testimony*—as opposed to physical evidence—at a hearing on a motion to reconsider, but there is no such limitation in WIS. STAT. § 805.17 or the case law. Although the circuit court was not required to accept additional evidence at the reconsideration hearing, it misused its discretion by allowing Webster to submit evidence to corroborate her testimony, but not allowing Gatzow to present testimony favorable to him. Therefore, we reverse the order and remand for a new *de novo* hearing on Webster's petition for a harassment injunction.

*By the Court.*—Order reversed and cause remanded.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

